

C. DUKE SCOTT
EXECUTIVE DIRECTOR

1401 Main Street, Suite 900
Columbia, SC 29201



NANETTE S. EDWARDS
DEPUTY EXECUTIVE DIRECTOR

Phone: (803) 737-0800
www.regulatorystaff.sc.gov

jnelson@regstaff.sc.gov

Jeffrey M. Nelson
Chief Counsel & Director of Legal Services

December 5, 2017

VIA ELECTRONIC FILING

Jocelyn G. Boyd, Esquire
Chief Clerk & Administrator
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, South Carolina 29210

**Re: Power Purchase Agreement between Duke Energy Progress, LLC and Olanta Solar, LLC
Docket No. 2016-41-E**

Dear Ms. Boyd:

The Office of Regulatory Staff ("ORS") has reviewed Duke Energy Progress, LLC's ("DEP") Memorandum in support of the Amendment to the Power Purchase Agreement ("Amendment"), which was filed with the Public Service Commission ("Commission") on December 4, 2017. ORS respectfully objects to DEP's argument for protecting the redacted information. As stated by Commissioner Fleming in consideration of the confidentiality of the SCE&G/Westinghouse contract, "the public's right to know far outweighs any confidential considerations."

ORS maintains its position that the information redacted in the Amendment should not be protected as confidential. DEP has not provided sufficient justification for the protection of the redacted information. There is no entitlement to confidential treatment, DEP even mentions in the Memorandum that in a similar scenario the Commission ruled that the information *could* be protected. (Emphasis added.) While some material may be allowed protection, there is no requirement compelling the protection that DEP is requesting. As DEP stated in its Memorandum, DEP's customers have a direct interest in the Company's ability to negotiate the most favorable terms for the purchase of power. With the current redactions of the terms, definitions, and prices, DEP's customers are left in the dark as to whether or not DEP's actions are to their benefit. Avoided cost is publicly available information, since purchased power is included in avoided cost there is no reason that information should not be publicly available. It is ORS's opinion that the Commission should be on the side of disclosure, as the public's right to know outweighs DEP's arguments for confidentiality. Furthermore, SCE&G has filed, and this Commission has approved, unredacted PPAs in dockets 2017-143-E and 2016-175-E to name a few.

Letter – Jocelyn G. Boyd, Esquire

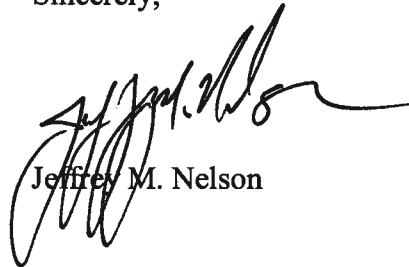
December 5, 2017

Page 2 of 2

To the extent that the Commission has previously granted the same confidentiality that DEP is currently seeking here, the South Carolina Supreme Court has ruled that the Commission is not to merely rely on its precedence as the basis for factual determinations. *See Heater of Seabrook Inc. v. PSC*, 332 S.C. 20, 26, 503 S.E.2d 739, 742 (1998) (quoting *Hamm v. PSC*, 309 S.C. 282, 289, 422 S.E.2d 110, 114 (1992) (“[t]he declaration of an existing practice may not be substituted for an evaluation of the evidence. A previously adopted policy may not furnish the sole basis for the Commission’s action.”)). And again, this Commission has more recently approved unredacted PPAs.

DEP is not entitled to the protection it is seeking, therefore ORS requests that the Commission exercise its discretion and deny DEP’s request for confidential treatment of its Amendment.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey M. Nelson", is written over the typed name.

Jeffrey M. Nelson

cc: Rebecca J. Dulin, Esquire (via E-Mail)
Frank R. Ellerbee III, Esquire (via E-Mail)
Joseph Melchers, Esquire (via E-Mail)